

**FILED**

DEC 05 2014

UNITED STATES BANKRUPTCY COURT  
SAN FRANCISCO, CA

KINGSWAY CAPITAL PARTNER, LLC.  
2148 University Avenue  
East Palo Alto, California 94303-1714  
(650) 323-1849  
(650) 228-2492 FAX

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

In Re:	)	Case No.: 14-31532 HLB 11
	)	
KINGSWAY CAPITAL PARTNER, LLC,	)	DEBTORS' RESPONSE IN OPPOSITION
	)	TO NOTICE OF MOTION AND MOTION
Debtor	)	FOR RELIEF FROM AUTOMATIC STAY
	)	
	)	DATE: DECEMBER 8, 2014
	)	TIME: 2:00 P.M.
	)	DEPT:
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DEBTOR RESPONSE IN OPPOSITION TO MARIA SOSA, NOTICE OF MOTION  
AND MOTION FOR RELIEF FROM AUTOMATIC STAY:

**I. INTRODUCTORY STATEMENT**

Movant has not met the burden of going forward where she has not proved the prima facie grounds justifying relief from stay under 11 USC §362(d) (1) or (2). Moreover, Debtor's continued possession of the property is necessary for an effective reorganization under 11 USC §362(d) (2).

**I. STATEMENT OF FACTS**

In Re Kingsway Capital Partners L.L.C. Response Motion for Relief from Stay

1 On or around January 29, 2013, Debtor and Maria Sosa and  
2 Patrick Brock entered into a lease agreement. The lease  
3 agreement was for 5 years. The Debtor entered into the lease  
4 agreement with intentions of first leasing and then purchasing  
5 the property located at 2148 University Avenue, East Palo Alto,  
6 California 94303.

7 Debtor paid to lessor the sum of \$1750 each month until on  
8 or about April 16, 2014. At which time, a discrepancy arose  
9 regarding the rent due, because from January through April 2014,  
10 the roof leaked water due to the rain and destroyed a large  
11 portion of the Debtor's business property. The cost of the  
12 damages to debtor's business property is approximately  
13 \$1,630,500.

14 Debtor leased space presently continues to leak water in  
15 which debtor has stored items to protect them from the rain.  
16 Nevertheless, the leased space is necessary for debtor's  
17 reorganization because the totality of debtor's business items  
18 have been damaged and is due from the movant in damages. As a  
19 result of the damages caused by Movant, Debtor received a  
20 default judgment against movant for 1661,567 on October 27, 2014  
21 for the damage to his business property(See Debtor's **Exhibit A**),  
22 which is an asset to this Bankruptcy case.

23 On October 27, 2014, Debtor also filed notice of this  
24 Bankruptcy proceeding in the Superior Court. Mysteriously and  
25 without debtor's knowledge or even a proof of service document  
26 filed with the court Movant managed to set aside the default

1 judgment on October 31, 2014. As a result, Debtor has appealed  
2 the set aside of the Default Judgment.

## 3 II. ARGUMENT

### 4 A. THE AUTOMATIC STAY SHOULD NOT BE TERMINATED UNDER 11 U.S.C. 5 SECTION 362(d)(1) BECAUSE MOVANT'S HAS NOT MET ITS BURDEN OF 6 SHOWING THE DEBTOR HAS NO EQUITY IN THE PROPERTY.

7 Movant Complains that a relief from the automatic stay  
8 should be granted under 11 U.S.C section 362(d)(1). However,  
9 movant has not met its burden proving the debtor does not have  
10 equity in the property. The movant's motion must be supported  
11 by admissible evidence in the form of declarations or other  
12 evidence establishing a prima facie case of the alleged "cause"  
13 for relief from stay. If the movant fails to make an initial  
14 showing of cause...the court should deny relief with out requiring  
15 any showing from the debtor that it is entitled to continued  
16 protection." *In re Sonnax Indus., Inc.* Supra. 907 F2d at 1285;  
17 *In re Ronald Peristein Enterprises, Inc.* (BC ED PA 1987) 70 BR  
18 1005, 1007.

19 Here, the movant submits a 2-page declaration. However, the  
20 only exhibit attached and submitted under penalty of perjury is  
21 a "3 day notice to pay rent or vacate." Moreover, in the  
22 declaration movant claims she is the sole owner of the property  
23 located at 2148 University Avenue, East Palo Alto, California.  
24 However, she does not submit any credible evidence of ownership.  
25 In fact, it appears from the county records that the property  
26 listed is owned by a Trust (Please see Debtor's **Exhibit C**). It

1 is questionable whether Maria Sosa has any standing to bring  
2 forth this action.

3 Moreover, Maria Sosa attaches Exhibits A-F to her Motion to  
4 be relieved from the Automatic Stay. However, they are not  
5 attached to or referred to in her declaration and therefore, not  
6 admitted under "Penalty of Perjury." The Exhibits should be  
7 deemed inadmissible and stricken from the record.

8 Therefore, without sufficient admissible evidence submitted  
9 to this court to establish a prima facie case of the alleged  
10 "cause" for relief, the relief should be denied.

11  
12 **B THE AUTOMATIC STAY SHOULD NOT BE TERMINATED UNDER 11 U.S.C.**  
13 **§ 362(d) (2) BECAUSE THE LEASEHOLD ESTATE IS NECESSARY FOR**  
14 **DEBTOR'S REORGANIZATION.**

15 Debtor shall be allowed to keep his business alive and pay  
16 creditors over time. Where the property is needed for an  
17 affective reorganization under 11 U.S.C. § 362(d) (2) relief from  
18 the stay will be denied even if the debtor has no equity in the  
19 property. [*La Jolla Mortg. Fund v. Rancho El Cajon Assocs.* (BC  
20 SD CA 1982) 18 BR 283, 289-290; *In re Elmore* (BC CD CA 1988) 94  
21 BR 670, 677.

22 *In re Dahlquist* (BC D SD 1983) 34 BR 476, 483, the Court  
23 found that debtors had no equity in livestock, crops, equipment  
24 and other farm products but property was needed for effective  
25 reorganization. Here, Debtor rented commercial property to run  
26 his business of real estate investment. To operate the

1 business, Debtor often meets clients in the commercial office  
2 space, works on his computer and business equipment, stores  
3 business files, employs personnel, and uses his entire  
4 commercial office space to run his business.

5 In early 2014, the commercial building space's, (the  
6 property at issue), where debtor operates his business, roof  
7 leaked on all of debtor's belongings, causing them to get wet  
8 and ultimately destroyed. As a result of the leaky roof, debtor  
9 lost his expensive computer equipment, collectibles, books,  
10 artwork, business furniture, business files and more. The  
11 extensive loss was approximately 1.6 million dollars (See  
12 Debtor's Exhibit A).

13 Under the lease, the landlord is responsible for  
14 maintaining insurance on the premises. Debtor reported the  
15 damages to the landlord and requested to view the landlord's  
16 insurance policy. However, the landlord refused to disclose the  
17 policy or repair the damage to debtor's business equipment,  
18 files, furniture etc.

19 Because of the leaky roof Debtor has been driven into  
20 bankruptcy in order to reorganize and recover from the severe  
21 loss to his business.

22 Therefore, where there is no equity in the property, where  
23 the property is necessary for an effective reorganization the  
24 stay should not be lifted under 11 USC §362(d) (2).

25 **C. DEBTOR'S STATUS AS A LEGAL ENTITY IS CORRECTIBLE UNDER A**  
26 **REORGANIZATION.**

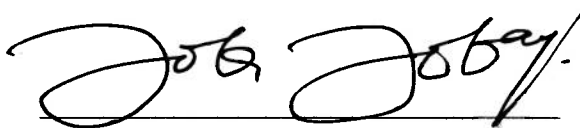
1 Debtor has filed this bankruptcy in under Chapter 11 USC  
2 for the purpose of reorganization. Where Debtor is in default  
3 of the Delaware Corporation fees of approximately \$1500, they  
4 will be paid through the reorganization process, (See Debtor's  
5 **Exhibit B**).

6 **III. CONCLUSION**

7 For the reasons set forth herein, the Court should deny the  
8 defendants motion for relief from stay under both 11 USC  
9 §362(d)(1) and (2).

10 KINGSWAY CAPITAL PARTNERS LLC.

11  
12 Dated: 12/5/2014

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26 KINGSWAY CAPITAL PARTNER, LLC.